

SENATE BILL REPORT

SSB 5531

As Amended by House, April 8, 2009

Title: An act relating to modifying provisions relating to consumer protection act violations.

Brief Description: Modifying provisions relating to consumer protection act violations.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Regala, Keiser, Kohl-Welles, Kauffman, Kline, Oemig, Pridemore, Tom and Franklin).

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/05/09, 2/23/09 [DPS, DNP].

Passed Senate: 3/06/09, 28-17.

Passed House: 4/08/09, 59-39.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5531 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

Staff: Alison Mendiola (786-7483)

Background: The Consumer Protection Act (CPA), first enacted in 1961, prohibits unfair or deceptive practices in trade or commerce. The act includes prohibitions on anti-competitive behavior and restraints on trade. The act may be enforced by private parties, the state, counties, municipalities, and all political subdivisions of the state.

Damages Under the CPA. In a lawsuit for a CPA violation, a prevailing plaintiff is entitled to recover (1) the actual damages sustained; (2) the costs of the suit; and (3) reasonable attorney's fees. Additionally, a court has the discretion to award additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at \$10,000 in superior court and \$75,000 in district court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Treble damages are available to private parties, counties, municipalities, and all political subdivisions of the state.

Private Actions Under the CPA. To prevail on a private CPA claim, a plaintiff must show (1) an unfair or deceptive act or practice; (2) that occurs in trade or commerce; (3) a public interest; (4) injury to the plaintiff in the plaintiff's business or property; and (5) a causal link between the unfair or deceptive act and the injury suffered.

Summary of Substitute Bill: In a lawsuit for a CPA violation, the district and superior courts have the discretion to award up to \$50,000 in damages, which may be awarded to private parties and to the counties, municipalities, and political subdivisions of the state.

In a private action claiming a CPA violation, a claimant may establish that the act or practice is injurious to the public because it:

- violates a statute which incorporates the CPA;
- violates a statute which contains a specific legislative declaration of public interest impact; or
- injured other persons, had the capacity to injure, or has the capacity to injure other persons.

Actions brought by the Attorney General are presumed to involve an act or practice injurious to the public interest.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This statute needs updating. There needs to be clear standards for private rights of action. The written complaints received by the Office of the Attorney General has increased by 25 percent in the last year. A recent report ranks Washington among the lowest for private enforcement. There is no incentive for private enforcement, which are all contingency cases. This bill would help change this and given the limited resources of the government in this economy, private enforcement is more likely. Consumers would benefit by the increased enforcement. The cap for damages is \$10,000 in superior court and \$75,000 in district court.

CON: Even if you took inflation into account, the \$10,000 cap in place would only be \$21,000 today. Punitive damages are disapproved of. This bill changes the public interest element a plaintiff is required to prove. More lawsuits in the horrible economy, when businesses are just hanging on, is a bad idea.

Persons Testifying: PRO: David Leen, Melissa Huelsman, consumer attorneys; Larry Shannon, Washington State Association for Justice; Yuh-Line Niou, Statewide Poverty Action Network.

CON: Mel Sorensen, Washington Defense Trial Lawyers; Cliff Webster, Washington Liability Reform Coaliton.

House Amendment(s): The amendment changed the amount of treble damages from \$50,000 to \$25,000. The amendment also removed the provision stating that an action brought by the Office of the Attorney General is presumed to involve a public interest.